



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by April 1, 2017. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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### PROPOSED

The Committee proposes amendments to the “operating while intoxicated” instruction, M Crim JI 15.3, for violations of MCL 257.625. The amendments consolidate the instruction, rather than having separate paragraphs for alcohol, controlled substances, or intoxicating substances. Added language is underlined. Deleted language is shown with strike-through.

#### **M Crim JI 15.3 Specific Elements of Operating While Intoxicated [OWI]**

(1) To prove that the defendant operated a motor vehicle while intoxicated, the prosecutor must also prove beyond a reasonable doubt that the defendant [*choose from the following*]:

- (a) operated the vehicle with a bodily alcohol level of 0.08 grams or more [per 100 milliliters of blood / 210 liters of breath / 67 milliliters of urine];<sup>1</sup>
- (b) was under the influence of alcohol while operating the vehicle;
- (c) was under the influence of a controlled substance while operating the vehicle;
- (d) was under the influence of an intoxicating substance while operating the vehicle;
- (e) was under the influence of a combination of [alcohol / a controlled substance / an intoxicating substance]<sup>2</sup> while operating the vehicle.

[Choose (i) or (ii) as appropriate:]

(i) [Name substance] is a controlled substance.

(ii) An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant’s body in any manner, that is used in a manner or for a

purpose for which it was not intended, and that may result in a condition of intoxication.

*[Choose from the following alternatives:]*

(2) ["Under the influence of alcohol" / "Under the influence of a controlled substance" / "Under the influence of an intoxicating substance"] means that because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into [his / her] body an intoxicating substance], the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be ~~what is called "dead drunk," that is, falling down or hardly able to stand up.~~ On the other hand, just because a person has [drunk alcohol or smells of alcohol / consumed or used a controlled substance / consumed or used an intoxicating substance] does not prove, by itself, that the person is under the influence of [alcohol / a controlled substance / an intoxicating substance]. The test is whether, because of [drinking alcohol / using or consuming a controlled substance / consuming or taking into [his / her] body an intoxicating substance], the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

~~(3) "Under the influence of a controlled substance" means that because of using or consuming a controlled substance, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has consumed or used a controlled substance does not prove, by itself, that the person is under the influence of a controlled substance. The test is whether, because of the use or consumption of a controlled substance, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner. [Name substance] is a controlled substance.~~

~~(4) "Under the influence of an intoxicating substance" means that because of consuming or taking into [his / her] body an intoxicating substance, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be falling down or hardly able to stand up. On the other hand, just because a person has consumed or used an intoxicating substance does not prove, by itself, that the person is under the influence of an intoxicating substance. The test is whether, because of consuming or taking into [his / her] body an intoxicating substance, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.~~

*[Choose (a) or (b) as appropriate:]*

~~(a) [Name substance] is an intoxicating substance.~~

~~(b) An intoxicating substance is a substance in any form, including but not limited to vapors and fumes, other than food, that was taken into the defendant's body in any manner, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.~~